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No. (1) 07-575

In The
Supreme Court of the United States

THOMAS CARROLL, WARDEN OF
THE DELAWARE CORRECTIONAL CENTER,

Petitioner,

v.

DAVID STEVENSON, MICHAEL
MANLEY, MICHAEL L. JONES,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Two of the three Respondents (Stevenson and Manley) were sentenced to death for committing first-degree murder. After their sentences were vacated and their cases were remanded for resentencing, prison officials transferred them from death row to a highly-secure housing area known as the Security Housing Unit (SHU). The third Respondent (Jones), transferred to SHU after a prison disturbance, was awaiting trial for first-degree murder. The questions presented are:

1. Whether, as the Third Circuit held, Respondents were entitled under the Due Process Clause to receive an explanation of the reason for their transfer and an opportunity to respond.

2. Whether, as the Third Circuit held, Respondents stated a substantive due process claim upon which relief could be granted because they alleged that their transfer to SHU constituted punishment.

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JURISDICTION

The court of appeals entered its opinion and judgment on July 30, 2007. No rehearing petition was filed below. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional provision is the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which states as follows:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

STATEMENT OF THE CASE

On March 4, 2004, the Respondents – three prisoners housed at the Delaware Correctional Center ("DCC") – filed an action under 42 U.S.C. § 1983 against Warden Thomas Carroll, alleging violations of their substantive and procedural due process rights. The United States District Court for the District of Delaware dismissed their complaint. The United States Court of Appeals for the Third Circuit reversed, holding that Respondents stated valid substantive and procedural due process claims sufficient to survive a motion to dismiss.

A. Factual Background

1. The three Respondents in this case are David Stevenson, Michael Manley, and Michael L. Jones. At the time of their complaint, Respondents Stevenson and Manley were awaiting resentencing. Both had been convicted and sentenced to death in January 1997, but their sentences were vacated and remanded on or about May 30, 2001. At that time, they were moved off death row and into the Security Housing Unit ("SHU"). Stevenson was moved from the SHU to a less restrictive pre-trial facility in December 2003, but was returned to the SHU in January 2004.

According to the complaint, neither one of them received a hearing or explanation for their transfers into the SHU. They were both subsequently resentenced to death on February 3, 2006.

The third Respondent, Jones, was awaiting trial for first-degree murder at the time he filed his complaint. Following an alleged prisoner riot at Gander Hill Prison in Wilmington, Delaware, he and several other inmates were moved to the SHU on or about February 19, 2003. Jones asserted that, like Stevenson and Manley, he was not afforded an explanation or hearing regarding his transfer into more restrictive housing. He did, however, state that he was alleged to have been involved in the riot at Gander Hill. Jones was subsequently found guilty of first-degree murder and sentenced to life imprisonment on September 16, 2005.

Prior to their resentencing (in the case of Stevenson and Manley) and conviction (in the case of Jones), the Respondents filed their § 1983 actions. They sought relief in the form of a transfer into the general prison population, monetary damages, and the establishment of a system of review for transfers of pretrial detainees into the SHU.

2. The Delaware Correctional Center (DCC) is the largest prison in Delaware, and is located in Smyrna, Delaware (10 miles north of Dover). It houses both convicted and sentenced inmates, and it holds the State's only death row housing area, which is maximum security. DCC also houses pretrial

detainees (a category which, under Third Circuit precedent, includes inmates whose sentences but not convictions have been overturned).[1] DCC provides two levels of housing for pretrial detainees: the general population is housed in the B Building pretrial unit, and security-risk detainees are housed in the Security Housing Unit (SHU) in Building #18. (App. 53). SHU is more restrictive than the general population pretrial, but detainees in SHU are permitted access to attorneys, the law library, commissary, recreation, and grievance procedures. (App. 54). Upon receiving a sentence, the prisoners will go through the classification process. (App. 54).

In their complaint, Stevenson and Manley alleged that they had been housed in SHU for 32 months since being off death row. (App. 34, 37). Contrasting the conditions in the SHU with pretrial general population conditions (App. 34-37), they characterized the transfers as "punitive." (App. 34). At no place in the complaint, however, did they allege any motive by any official to punish them or any statement by any official indicating an intent to punish them.

The complaint failed to address the conditions in death row or compare them to the conditions in SHU.

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[1] Prisoners who have been convicted but not yet sentenced are deemed pretrial detainees in the Third Circuit. App. 7 (citing *Cobb v. Aytch*, 643 F.2d 946, 962 (3d Cir. 1981); *Fuentes v. Wagner*, 206 F.3d 335, 341 (3d Cir.), *cert. denied*, 531 U.S. 821 (2000).

In fact, the complaint acknowledged that Stevenson and Manley's transfer off death row and return to pretrial detainee status after their sentences were vacated was pursuant to "standard practice" at DCC. (App. 34). The complaint alleged that "other inmates . . . in the same situation" were moved to general population for detainees instead of SHU. (App. 8). The complaint failed to specify whether the "same situation" meant having a sentence vacated or having a death sentence vacated.

An affidavit by the Warden that was attached to his motion to dismiss described the reasons for the Respondents' placement in SHU. (App. 52). The Warden's affidavit stated that detainees considered a security risk are housed in the SHU pretrial area. Because all three plaintiffs were charged with first-degree murder, and two of them had been convicted of that charge, they were considered highly dangerous. Stevenson and Manley were considered especially dangerous because they were subject to being sentenced to death again. Therefore, they were assigned to the pretrial area of SHU. (App. 53).

B. Proceedings Below

The district court held that the Respondents' complaint failed to state a claim upon which relief can be granted. (App. 23). It found that their transfer into the SHU was within the scope of the prison officials' authority with respect to prison management. And, relying on *Hewitt v. Helms*, 459 U.S. 460

(1983), and *Sandin v. Conner,* 515 U.S. 472, 482-83 (1995), the court found no state law or regulation conferring a liberty interest upon the Respondents. (App. 23).

Respondents appealed to the Third Circuit. They presented two arguments as to why their complaint should have survived the motion to dismiss. First, they argued that they sufficiently asserted a liberty interest in being free from punishment prior to imposition of sentence. Second, they asserted that they should have been afforded notice of their transfer and an opportunity to respond. The Warden disputed the sufficiency of their substantive and procedural due process claims, arguing that the gist of their complaint was that they had a right to be in general population, for which they had no cognizable liberty interest.

The court of appeals held that the Respondents were entitled to procedural due process at the time they were transferred to SHU. (App. 14). This holding applied to Stevenson and Manley as well as to Jones, even though Stevenson and Manley had been housed in death row before their transfer. The court reasoned that "[a]lthough pretrial detainees do not have a liberty interest in being confined in the general prison population, they do have a liberty interest in not being detained indefinitely in the SHU without explanation or review of their confinement." (App. 14). The court ruled, therefore, that detainees who are administratively transferred are generally entitled to procedural due process: "Prison officials must

provide detainees who are transferred into more restrictive housing for administrative purposes . . . an explanation of the reason for their transfer as well as an opportunity to respond." (App. 15).

The court of appeals also held that the complaint sufficiently alleged a substantive due process claim to survive a motion to dismiss. The court found that the reasoning of *Sandin v. Connor*, 515 U.S. 472 (1995), had no application to the Respondents in this case, who are all deemed pretrial detainees under Third Circuit precedent. Relying upon *Bell v. Wolfish*, 441 U.S. 520 (1979), the court stated that the issue was whether prison officials were punishing the Respondents when they transferred them to the SHU. Noting that Stevenson and Manley asserted they were not treated the same as other similarly situated inmates, the court found that one reasonable inference from the complaint was that the Respondents' confinement in SHU was arbitrary and, therefore, punitive. (App. 11).[2]

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[2] In a footnote, the court stated that the Respondents' request for a system of review for transfers of pretrial detainees into SHU was moot because, at the time of this decision, Stevenson and Manley were back on death row and Jones was housed in the part of SHU for sentenced inmates. However, the court viewed the plaintiffs' claims for monetary damages and relief in the form of a transfer into the general population as viable. (App. 3 n.1). The court also ruled that the determination of qualified immunity should be initially decided by the district court. (App. 19).

REASONS FOR GRANTING THE PETITION

It has been nearly 30 years since this Court issued its seminal opinion on the rights of pretrial detainees: *Bell v. Wolfish*, 441 U.S. 520 (1979). Today, the circuit courts are going in different directions on the scope of detainees' rights under the Due Process Clause, each in reliance upon *Bell*. It is time for this Court to provide additional guidance on the issue.

The instant case is the appropriate vehicle to address the issue, for it illustrates the conflict and confusion among the circuits, as well as a departure from the original precepts of *Bell*. The Third Circuit has announced a sweeping rule that *all* pretrial detainees have a liberty interest entitling them to notice and opportunity to respond *any* time they are transferred to more restrictive housing. Applied here, the Third Circuit rule led to the following, utterly illogical, outcome: convicted murderers moved from death row to a highly secure housing area for pretrial detainees, pending a determination in state court as to whether they should receive death sentences or life imprisonment, are deemed to have procedural due process rights that are triggered by the move. The same result would not obtain in several other federal courts of appeal, which have concluded in conflict with the Third Circuit that administrative transfers do not implicate pretrial detainees' liberty interests.

The Third Circuit's substantive due process ruling also warrants this Court's review. The Third Circuit held that, because the complaint asserted that

the Respondents were not treated the same as other similarly situated inmates, the complaint stated a claim for a violation of their substantive due process rights. It is highly implausible, however, that a death row inmate is being punished when he is transferred *out of* death row. The complaint did not assert that the new housing unit is any more restrictive than death row. Nor did it identify any fact supporting the Respondents' allegation of dissimilar treatment. If such a complaint can survive a motion to dismiss, motions to dismiss will never succeed on this issue. It should not be that easy for prisoners to force prison officials to go through discovery.

I. CERTIORARI SHOULD BE GRANTED TO REVIEW THE THIRD CIRCUIT'S RULING THAT THE DUE PROCESS CLAUSE REQUIRES PRISON OFFICIALS TO PROVIDE PRETRIAL DETAINEES WITH NOTICE AND AN OPPORTUNITY TO RESPOND WHENEVER THE DETAINEES ARE TRANSFERRED TO MORE RESTRICTIVE HOUSING UNITS.

A. The Circuits Are in Conflict over This Issue.

1. The circuits are in conflict over whether administrative transfers of detainees implicate procedural due process.

a. Numerous precedential opinions from other courts of appeal, most notably the Sixth and Seventh

Circuits, have held that administrative transfers of detainees generally do not implicate procedural due process concerns. *See Martucci v. Johnson*, 944 F.2d 291 (6th Cir. 1991); *Holly v. Woolfolk*, 415 F.3d 678, 679 (7th Cir. 2005); *Higgs v. Carver*, 286 F.3d 437, 438 (7th Cir. 2002); *Zarnes v. Rhodes*, 64 F.3d 285 (7th Cir. 1995); *Crane v. Logli*, 992 F.2d 136 (7th Cir. 1993).

Detainees charged with murder are commonly housed in maximum security, with many restrictions and few privileges, and their due process challenges are commonly rejected by the courts. In *Crane v. Logli*, 992 F.2d 136 (7th Cir. 1993), the Seventh Circuit rejected a detainee's procedural due process claim on facts similar to those alleged here. The detainee was held in a maximum security prison during the period after his conviction was reversed by an appellate court and pending retrial. The lower court dismissed the complaint and the Seventh Circuit affirmed the dismissal. Applying the *Bell v. Wolfish* due process analysis, the court found no liberty interest was implicated. *Id.* at 139. Although the Seventh Circuit questioned whether the plaintiff was really a pretrial detainee, it also relied on the analysis of the district court in *Getch v. Rosenbach*, 700 F.Supp. 1365, 1370 (D.N.J. 1988). In *Getch*, the plaintiff's detainee status was accepted by the court but found subordinate to the fact that the Due Process Clause simply did not create a liberty interest under those circumstances. Although the plaintiff in

Getch failed to dispute that he lacked a liberty interest under the Due Process Clause of the Fourteenth Amendment, the district court's analysis clearly demonstrated the court's belief that such an interest was absent. *Id.* at 1370. The Seventh Circuit agreed with that view. *See also Franklin v. True*, 76 F.3d 381 (table), 1996 WL 43532 (7th Cir. Jan. 30, 1995).

The Sixth Circuit has likewise rejected the notion that detainees have a liberty interest in the security level of their confinement. In *Martucci v. Johnson*, 944 F.2d 291 (6th Cir. 1991), the Sixth Circuit rejected the claim of a liberty interest in the context of a short-term disciplinary confinement for a detainee. The lower court found that the confinement was based on a security decision and granted summary judgment for the defendants. Applying *Bell v. Wolfish*, the Sixth Circuit embraced the lower court's reliance on the principle of deference to the judgment of prison officials as to security decisions. The appellate court stated: "The federal Constitution, standing alone, does not confer upon prisoners a 'liberty interest' in any particular form of confinement." *Id. See also Stafford v. Edmonds*, 76 F.3d 380 (table), 1996 WL 38222 (6th Cir. Jan. 30, 1996).

b. Through unpublished opinions, the Second and Ninth Circuits have also rejected the notion that the Due Process Clause grants pretrial detainees a liberty interest in the security level of their housing assignment. In *Garcia v. Pugh*, 8 F.3d 26 (table), 1993 WL 362268 (9th Cir. Sept. 17, 1993), the Ninth Circuit held that a detainee's placement in maximum

security did not violate his procedural due process rights because he had no liberty interest in a particular classification. The Ninth Circuit reached the same result in *Alexander v. Frank*, 967 F.2d 583 (table), 1992 WL 149679 (9th Cir. June 30, 1992), in which the court affirmed summary judgment for prison officials where a detainee alleged his classification to maximum security violated the Due Process Clause. Applying *Bell v. Wolfish*, the appellate court held that prisoners "do not have a constitutional right to a particular classification status." *Id.* at *1. The court found a reasonable relationship between the prisoner's murder charges and his classification to maximum security. *Id. See also Miramontes v. Chief of Department of Corrections*, 86 Fed. Appx. 325 (9th Cir. 2004).

The Second Circuit has also rejected the claim that classifying a detainee to maximum security implicates any liberty interest under the due process clause. In *McMillian v. Cortland County Correctional Facility*, 198 F.3d 234 (table), 1999 WL 753336 (2d Cir. Sept. 14, 1999), the Second Circuit affirmed summary judgment for prison officials after finding the classification was rationally related to a legitimate government interest. The appellate court stated that the classification comported with *Bell v. Wolfish* and "did not otherwise impair any liberty interest that would trigger due process requirements." *Id.* at *1.

Although many of these cases were decided at the summary judgment stage, their analysis applies

equally at the motion-to-dismiss stage. The courts reasoned as follows: (1) the Due Process Clause does not create a liberty interest with respect to a transfer to administrative segregation or maximum security, (2) if such an interest exists, it is because it is created by state law, and (3) where state law creates no liberty interest, none exists. In this case, the district court was well aware, through precedent, that Delaware has never provided a liberty interest with respect to housing transfers for administrative or classification reasons, and so it was entitled to dismiss the procedural due process claim. In reversing the district court, the Third Circuit departed from the sound reasoning of several other federal courts of appeals.

2. The circuits are in conflict over whether *Sandin v. Connor* applies to administrative transfers of detainees.

In *Sandin v. Conner*, 515 U.S. 472, 484 (1995), this Court held that a State creates liberty interests protected by the Due Process Clause only when it "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." In the decision below, the Third Circuit found that *Sandin* had no application to this action because the Respondents were, under that court's precedents, deemed "pretrial detainees." The Third Circuit's opinion deepens an existing conflict over whether *Sandin* applies to determinations of liberty interests

of detainees. Three circuits have held that it does; four circuits agree with the Third Circuit that it does not. This conflict over how to analyze detainees' procedural due process claims further highlights the need for this Court's review.

The Second, Third, Seventh, and Ninth Circuits have held that *Sandin* procedural due process analysis does not apply to detainees. In *Rapier v. Harris,* 172 F.3d 999, 1004-05 (7th Cir. 1999), for example, the Seventh Circuit distinguished *Sandin* on the ground that pretrial detainees "are not under a sentence of confinement, and therefore it cannot be said that they ought to expect whatever deprivation can be considered incident to serving such a sentence." *See also Benjamin v. Fraser*, 264 F.3d 175, 188-89 (2d Cir. 2001) (same); *Fuentes v. Wagner,* 206 F.3d 335, 341-42 n.9 (3d Cir.) (same), *cert. denied,* 531 U.S. 821 (2000); *Resnick v. Hayes,* 213 F.3d 443, 448 (9th Cir. 2000) (same); *Mitchell v. Dupnik,* 75 F.3d 517, 523 (9th Cir. 1996) (same).

By contrast, the Sixth, Eighth, and District of Columbia Circuits have explicitly applied the *Sandin v. Connor* analysis to detainee due process claims, even in the disciplinary segregation context. *See Polk v. Parnell*, 132 F.3d 33 (table), 1997 WL 778511 (6th Cir. Dec. 8, 1997); *Johnson v. Esry*, 210 F.3d 379 (table), 2000 WL 375269 (8th Cir. Apr. 13, 2000); *Rae v. Henderson*, 1995 WL 759466 (D.C. Cir. Nov. 17, 1995). In *Polk*, the Sixth Circuit found that allegations by a pretrial detainee of being placed in disciplinary segregation for four days without due process

did not constitute an atypical and significant hardship under *Sandin*. In *Johnson*, the Eighth Circuit affirmed the dismissal of a detainee's complaint, finding his due process claim lacked merit because eight days in a solitary cell did not amount to an atypical and significant deprivation under *Sandin*. And in *Rae*, the District of Columbia Circuit granted a motion for summary affirmance, finding that a detainee's due process rights were not violated by placement in protective custody because the confinement did not constitute an atypical and significant hardship under *Sandin*.

Several district courts have remarked upon the confusion that exists in this area. *See Rodriguez v. Penobscot County Jail*, 2001 WL 376453 at *3-*4 (D.Me. Apr. 11, 2001) (finding law is unclear for purposes of qualified immunity); *Cornett v. Webb*, 2004 WL 3437504 at *5 (E.D. Ky. May 13, 2004) (noting conflict among circuits and applying *Bell*, *Hewitt v. Helms*, 459 U.S. 460 (1983), and *Sandin* analysis to find no liberty interest); *Walton v. NFN Douglas*, 2006 WL 1751735 at *5 (D.S.C. June 23, 2006) (noting "conflicting views" of whether disciplinary segregation of detainee entitles him to due process).

B. The Third Circuit's Ruling Conflicts with This Court's Decisions.

In viewing the issue as whether pretrial detainees have a right to procedural due process when they

are administratively transferred, the Third Circuit framed the issue in an overly general manner.[3] The issue is, more precisely, whether *these* pretrial detainees had a right to due process under these circumstances. That is, whether pretrial detainees convicted of first-degree murder and housed on death row, or charged with first-degree murder, are entitled to due process when transferred to another high security area. This Court's decisions establish that they are not.

1. This Court has always rejected the view that, in the absence of a state-law liberty interest, the Due Process Clause requires procedural protection for prison transfers.

Historically, this Court has found that prisoners have a liberty interest in administrative prison transfers and classification decisions only where state law created such an interest. *See Meachum v. Fano*, 427 U.S. 215, 228-29 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976); *Olim v. Waukinekona*, 461 U.S. 238 (1983). In contexts other than prisoner transfers and classification, this Court has found that the Due Process Clause itself may be the source of a liberty interest in certain circumstances where some form of

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[3] The court stated: "Prison officials must provide detainees who are transferred into more restrictive housing for administrative purposes . . . an explanation of the reason for their transfer as well as an opportunity to respond." (App. 15).

grievous loss is imposed. *See Vitek v. Jones*, 445 U.S. 480, 494 (1980) (stigmatizing consequences of transfer to mental hospital coupled with mandatory behavior modification as treatment for mental illness gave rise to liberty interest). In *Sandin v. Connor*, 515 U.S. 472 (1995), the Court did not reject state law as the general source of liberty interests for prisoner due process claims, but restricted such state-law created liberty interests to the context in which an atypical and significant hardship relative to the ordinary incidents of prison life is alleged.

Even though the decisions of this Court in *Meachum v. Fano*, *Montayne v. Haymes*, and *Sandin v. Connor* were partially premised upon the fact of conviction, they were also premised upon the absence of state law creating a liberty interest, as well as upon the historical discretion of prison officials in making such decisions and the limited role of the federal judiciary with respect to prison management. These latter factors apply with equal strength in the detainee context as with convicted and sentenced inmates.

The district court in this action carefully noted the lack of any state law or regulation creating a liberty interest for the Respondents here. It also noted that prison regulations affirmatively gave the Warden a great amount of discretion: "DOC Procedure 3.31 explicitly states that the warden has virtually unlimited discretion in placing inmates within the prison 'in any security/custody level.'" (App. 42). The court also relied upon *Brown v. Cunningham*,

730 F.Supp. 612, 614 (D.Del. 1990), a District of Delaware precedent that found no state-law created liberty interest in the Delaware prison system. Thus, the most important source of a liberty interest according to *Hewitt v. Helms* and *Sandin v. Connor* – state law – is utterly lacking here.

2. There is no reasonable expectation of general population housing conditions here.

In *Sandin*, this Court approached the issue of the existence of a liberty interest from the perspective of what conditions a prisoner may reasonably expect to be subjected to in the prison environment: "Although we do not think a prisoner's subjective expectation is dispositive of the liberty interest analysis, it does provide some evidence that the conditions suffered were expected within the contour of the actual sentence imposed." 515 U.S. at 486 n.9. The fact that a convicted and sentenced prisoner may reasonably expect to face somewhat harsh conditions as part of the punishment counseled against a finding of a liberty interest even where state law could have been said to provide it.

Here, the logic of punishment does not apply, but the question of what housing conditions a detainee charged with or convicted of first-degree murder may reasonably expect is still relevant. The reasonable expectations of a person claiming to have suffered a

deprivation due to state action are always an important factor in liberty interest analysis. Thus, in *Vitek v. Jones, supra,* the Court noted approvingly the district court's conclusion that:

> This "objective expectation, firmly fixed in state law and official penal complex practice," that a prisoner would not be transferred unless he suffered from a mental disease or defect that could not be adequately treated in the prison, gave Jones a liberty interest that entitled him to the benefits of appropriate procedures in connection with determining the conditions that warranted his transfer to a mental hospital.

Id. at 489-90.

A detainee convicted of first-degree murder is not in the same position as a detainee charged with shoplifting. However, the court of appeals' decision would treat them as the same because they are both detainees. Some consideration should be paid to what security constraints a detainee should reasonably expect given the circumstances of his case. A detainee convicted of first-degree murder and possibly subject to having the death penalty reimposed should expect to be housed in a restrictive, high-security environment. If he is placed in general population, he may consider himself fortunate, but any expectation of that level of security housing is not reasonable and should not be the basis for a finding of a liberty interest.

3. A transfer from one maximum-security housing area to another should not require procedural due process.

Another pertinent factor is what the conditions were in the environment from which the detainee was transferred. Where a detainee convicted of first-degree murder has been housed in death row, and is being moved to another high security area, it is difficult to see how his prior residence in death row conferred a liberty interest upon him. As this Court stated in *Washington v. Harper*, 494 U.S. 210, 222 (1990), "[t]he extent of a prisoner's right under the Clause to avoid [detrimental state action] . . . must be defined in the context of the inmate's confinement."

In *Sandin*, this Court stated that "lawful incarceration" results in the necessary withdrawal or limitation of many privileges and rights. 515 U.S. at 485. A detainee convicted of murder, but not yet sentenced, is as lawfully incarcerated as is a sentenced inmate. Even in terms of the punishment of convicted and sentenced inmates, this Court noted that the process "effectuates prison management and rehabilitative goals." *Id.* While rehabilitation may be inapplicable to detainees, this Court stated in *Bell v. Wolfish, supra,* that the prison management considerations are the same for convicts and detainees. 441 U.S. at 546 n.28. The reasoning of *Sandin* should apply to a detainee, especially one who has been convicted of first-degree murder.

Nothing in *Wilkinson v. Austin*, 545 U.S. 209 (2005), is to the contrary. In *Austin*, this Court held that extended confinement in the Ohio supermax prison created an atypical and significant hardship because of its indefinite duration, and the fact that placement there disqualified an otherwise eligible inmate for parole consideration. *Id.* at 224. There is no allegation in this case that the transfer to SHU had any detrimental effect upon the sentence that the Respondents would receive or serve, including future parole consideration. And it is undisputed that Respondents Stevenson and Manley were only placed in pretrial SHU pending their resentencing to either death or life imprisonment.

C. This Issue Is Important to the Administration of State Prisons.

The Third Circuit's holding creates a procedural due process right for all pretrial detainees, including convicted but unsentenced prisoners, at or about the time of transfer to a higher security housing area than general population, regardless of the reason for the transfer.[4] The court ruled that "[p]rison officials must provide detainees who are transferred into more restrictive housing for administrative purposes . . . an

[4] The court of appeals seemed to assume that pretrial SHU housing is more restrictive than death row, even though this was not alleged. The complaint focused on a comparison of SHU to the general population conditions, as the court itself noted. (App. 12).

explanation of the reason for their transfer as well as an opportunity to respond." (App. 15). The holding contains no limits: it means that *all* detainees being moved to pretrial SHU will have to receive written notice of the reason for their housing status, with opportunity for them to rebut those reasons, regardless of the reason for their transfer or where they were housed before. Although this rule will aid detainees only marginally, it will cause prison officials considerable time and effort.

Given that the reason for Respondents' confinement in SHU is that they are either convicted of or charged with first-degree murder, there is nothing that notice to them and a paper review of their response would accomplish. It would become a meaningless paperwork task, in addition to already-considerable paperwork obligations, and a further distraction from core responsibilities to protect the lives of prison staff and other inmates. While obligations such as the one imposed in this case may appear in isolation not to be onerous, collectively as such obligations grow in the expanding universe of prisoner rights they can become an enormous distraction from the central tasks of managing a prison or detention facility.

As this Court stated in *Meachum v. Fano*, 427 U.S. 215, 228-29 (1976):

> Holding that arrangements like this [prison transfers] are within the reach of the procedural protections of the Due Process Clause

> would place the Clause astride the day-to-day functioning of state prisons and involve the judiciary in issues and discretionary decisions that are not the business of federal judges. We decline to so interpret and apply the Due Process Clause. The federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States.

If every detainee housing transfer allegedly resulting in more onerous conditions is deemed to trigger due process protection, as the Third Circuit holds, then indeed the Due Process Clause has been placed astride the day-to-day functioning of state prisons.

II. CERTIORARI SHOULD BE GRANTED TO REVIEW THE THIRD CIRCUIT'S RULING THAT RESPONDENTS' SUBSTANTIVE DUE PROCESS RIGHTS WERE VIOLATED WHEN THEY WERE TRANSFERRED TO THE SECURITY HOUSING UNIT.

In *Bell v. Wolfish*, this Court held that "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." 441 U.S. at 535-36. That is not all the Court stated in *Bell*. The Court also set forth three important principles that bear on this case: (1) the presumption of innocence is a doctrine for allocating the burden of proof in criminal trials, and has no bearing on the rights of a detainee concerning prison

conditions (*id.* at 533); (2) security and other institutional considerations are generally the same with respect to convicted inmates and pretrial detainees, as pretrial detainees may be as dangerous or even more so than convicted inmates (*id.* at 546 n.28); and (3) the courts should play a "very limited role" with respect to detention facilities and, where there is a reasonable relationship between a restriction and a legitimate governmental purpose, restrictions do not without something more amount to punishment (*id.* at 539, 547-48). *See also Block v. Rutherford*, 468 U.S. at 584, 589. Given these principles, it is difficult to reconcile the recent expansion of detainee rights in the Third Circuit with *Bell*.

In the instant case, there is no allegation in the complaint of an express intent to punish by Warden Carroll. The gist of the complaint (as to Stevenson and Manley) is that convicted murderers who have been moved to a pretrial area with conditions little or no better than those in death row would like to be housed in the general population. At one place in the complaint, Respondents characterize their transfers to SHU as "punitive." (App. 34). The use of this term should not, by itself, lead to the conclusion that the complaint states a claim for a substantive due process violation. The court of appeals, more focused on its own broad definition of "pretrial detainee" than the analysis of *Bell*, refuses to incorporate into its analysis any recognition that one should expect first-degree murderers, and those charged with first-degree murder, to be placed in a highly secure housing area.

Nor should it matter that not every person charged with first-degree murder has been placed in SHU: the reasonable relationship between security concerns and highly secure housing exists regardless of past practice.

This Court expanded on the nature of the *Bell v. Wolfish* test in a subsequent case, *Block v. Rutherford,* 468 U.S. 576 (1984). In *Block,* this Court stated that the due process/detainee reasonable relationship test is not a balancing test. That is, the trial court may not balance the detainee's deprivations against the state's interest and determine whether the restrictions are justified. If there is a reasonable relationship between the asserted state interest and the restrictions about which the detainee complains, the trial court is obligated to defer to the professional judgment of prison officials:

> When the District Court found that many factors counseled against contact visits, its inquiry should have ended. The court's further "balancing" resulted in an impermissible substitution of its view on the proper administration of Central Jail for that of the experienced administrators of that facility. Here, as in *Wolfish*, "[i]t is plain from [the] opinions that the lower courts simply disagreed with the judgment of [the jail] officials about the extent of the security interests affected and the means required to further those interests."

468 U.S. at 589.

In the instant action, the Respondents complain that they are held in a high security housing area that is highly restrictive. The asserted state interest is prison security. (*See* affidavit of Warden Tom Carroll at App. 53). Respondents admit that they are charged with capital crimes. (App. 33). The professional judgment of the prison officials is that persons charged with first-degree murder are likely to be highly dangerous individuals, and therefore they present a security risk. Because they are deemed to present a security risk, they are housed in a high security unit of SHU.

The reasonable relationship between the charges against Respondents and the state's interest in prison security is obvious. Only by engaging in some form of balancing can a court alter the required analysis and its necessary outcome. However, such balancing is prohibited. The issue of security, above all others, is one where the professional judgment of prison officials must be respected and judicially affirmed. The housing of alleged murderers is a situation where the issue of security is more clearly implicated than in any other.

In fact, some states do not transfer out of death row those inmates who have been convicted of first-degree murder but are being resentenced. The officials here moved Respondents Stevenson and Manley to the pretrial area of SHU to comport with the Third Circuit's position that they had, by having their death sentences vacated, become like pretrial detainees. From a security perspective, however, nothing

changed with respect to Stevenson and Manley. They remained equally dangerous as when they were sentenced to death.

Finally, if every prisoner complaint using the term "punitive" or alleging that somebody else was treated differently is deemed to state a claim, regardless how insubstantial, the courts will not play a "very limited role" with respect to prison management. The prisoners have all the time in the world to litigate everything they do not like. The prison officials do not. If the prison officials must litigate every detainee housing decision where a detainee uses the term "punitive" in a complaint, or where he alleges others were treated better, the distraction created thereby will be substantial – not limited.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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495 F.3d 62

United States Court of Appeals,
Third Circuit.

David STEVENSON; Michael Manley;*
Michael L. Jones, Appellants
v.
Thomas CARROLL, Warden.
*Reinstated per clerk's order of 08/09/05.

No. 05-1088.

Argued June 4, 2007.
Filed: July 30, 2007.

Leon F. DeJulius, Jr. (Argued), Jones Day, Pittsburgh, PA, Counsel for Appellants.

Richard W. Hubbard (Argued), Department of Justice, Wilmington, DE, Counsel for Appellee.

Before: SMITH, COWEN, and SILER, Circuit Judges.*

OPINION OF THE COURT

SMITH, Circuit Judge.

Three detainees in the Delaware Correctional System – David Stevenson, Michael Manley, and Michael L. Jones – filed an action under 42 U.S.C. § 1983 against Warden Thomas Carroll, alleging

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* The Honorable Eugene E. Siler, Senior Circuit Judge for the United States Court of Appeals for the Sixth Circuit, sitting by designation.

violations of their substantive and procedural due process rights. The District Court dismissed their complaint. On appeal, they assert that their allegations of placement in restrictive confinement state valid substantive and procedural due process claims sufficient to survive a motion to dismiss. We agree, and remand the case to the District Court.

I.

At the time of their complaint, Stevenson and Manley were awaiting resentencing. Both had been convicted and sentenced to death in January 1997, but their sentences were vacated and remanded on or about May 30, 2001. At that time, they were moved off death row, and into the Security Housing Unit ("SHU"). Stevenson was moved from the SHU to a less restrictive pre-trial facility in December 2003, but was returned to the SHU in January 2004. Neither one of them received a hearing or explanation for their transfers into the SHU. They were both subsequently re-sentenced to death on February 3, 2006.

Jones was awaiting trial at the time of the complaint. Following a disruption at Gander Hill Prison in Wilmington, Delaware, he and several other inmates were moved to the SHU on or about February 19, 2003. Jones asserts that, like Stevenson and Manley, he was not afforded an explanation or hearing regarding his transfer into more restrictive housing. He does, however, state that he was alleged to have been involved in the riot at Gander Hill. Jones

was subsequently found guilty of first-degree murder and sentenced to life imprisonment on September 16, 2005.

The appellants seek relief in the form of a transfer back into the general prison population, monetary damages, and the establishment of a system of review for transfers of pretrial detainees into the SHU.[1]

The Warden filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), which was granted on December 7, 2004. The District Court held that the detainees' transfer out of the general prison population into the SHU for nonpunitive reasons was within the scope of the prison officials' authority with respect to prison management. In its ruling, the District Court relied upon *Sandin v. Conner,* 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). The plaintiffs appealed from this order on January 4, 2005.[2] Review of a dismissal of a complaint under Rule 12(b)(6) is plenary. *Lake v. Arnold,* 112 F.3d 682, 684-85 (3d Cir.1997).

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[1] Stevenson and Manley are now on death row, and Warden Carroll indicates that Jones is now housed in the part of the SHU reserved for sentenced inmates. Accordingly, their request for injunctive relief on the grounds that they are improperly confined pretrial detainees is moot. The other two forms of relief they seek continue to be viable.

[2] The District Court had subject matter jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

II.

Stevenson, Manley, and Jones present two arguments as to why their complaint should have survived the motion to dismiss. First, they argue that they have sufficiently asserted a liberty interest in being free from punishment prior to imposition of sentence. Second, they assert that they should have been afforded notice of their transfer and an opportunity to respond. The Warden disputes the sufficiency of their substantive and procedural due process claims, arguing that they have made only conclusory allegations regarding punishment and have no cognizable liberty interest in being housed in the general prison population.

In support of his contention that the complaint made only conclusory statements regarding punishment, the Warden looks to *Evancho v. Fisher,* 423 F.3d 347, 351-53 (3d Cir.2005). The opinion in *Evancho,* however, offers the Warden no support. The holding of *Evancho* is that the amended complaint of a state employee filed against the state attorney general alleging violations of the Pennsylvania Whistleblower Law and her civil rights failed to meet the liberal pleading requirement of Federal Rule of Civil Procedure 8(a). Evancho admitted that she did not have evidence of the involvement of one of her named defendants. *Id.* at 350. The complaint here is significantly different in that it does support a claim for substantive due process violations. As the Warden acknowledges, the complaint alleges that "Plaintiffs weren't given an explanation for the punitive move."

This express reference to punishment is supported by numerous references in the complaint to lengthy stays in isolation with prisoners who had disciplinary problems or who were in protective custody, and the imposition of additional hardships that are not shared by the general prison population. The reasonable inference from these factual allegations is that appellants were impermissibly punished. *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir.1990) ("We accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them."). Liberal pleading dictates that, particularly in the context of a pro se complaint, such allegations be deemed sufficient. *Erickson v. Pardus*, ___ U.S. ___, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Gibbs v. Roman*, 116 F.3d 83, 86 (3d Cir.1997).

To be sure, there are reasonable inferences apart from punishment that could be drawn from the complaint as explanation for the appellants' confinement. Jones notes that he was alleged to have been a participant in a riot at the Gander Hill detention facility. If this allegation is true, it is entirely possible that his relocation to the Smyrna facility's SHU was for disciplinary reasons rather than for impermissible retaliation or punishment. Likewise, Stevenson and Manley admit that they had been sentenced to death, but that only their sentences had been vacated. Death sentences are available in Delaware only for offenses of first-degree murder. *See* 11 DEL. CODE §§ 636, 4209(a). Accordingly, the Warden's assertion that Stevenson and Manley were housed in the SHU

because they were charged with violent offenses is also a legitimate inference to be drawn from the complaint. However, the fact that such inferences may be drawn is proof that the dismissal was premature. The appellants have met their obligation to provide grounds for their entitlement to relief by presenting factual allegations sufficient to raise their right to relief above a speculative level. *See, e.g., Bell Atlantic Corp. v. Twombly,* ___ U.S. ___, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007).

The complaint also alleges sufficient facts to make out a claim for relief based on procedural due process. In addition to the list of deprivations the plaintiffs suffered, the complaint states that they were not afforded "all the rights of normal pretrial [detainees]," and that the "standard practice at Delaware Correctional Center" of returning those whose sentences had been vacated to the general prison population was not followed. These allegations do not explicitly state the nature of the appellants' alleged liberty interest, but they provide an adequate framework for the inquiry. *See, e.g., Unger v. Nat'l Residents Matching Program,* 928 F.2d 1392, 1402 (3d Cir.1991) (requiring "facts in [the] complaint from which we could infer that [plaintiff] had a liberty or property interest").

The complaint details the differences between the conditions they encountered in the SHU and those encountered by regular pretrial detainees. It evinces the appellants' contention that they were improperly housed in the SHU without explanation

or an opportunity to contest their placement. The complaint states that the appellants wrote to Warden Carroll and his employees requesting an explanation for their confinement in the SHU, but received no response. The reasonable inference to be drawn from these allegations is that the appellants assert a liberty interest in being free from punishment while awaiting sentencing and in not being held in the SHU indefinitely. The plaintiffs specifically requested relief in the form of "a system to inform inmates why they were put into isolation, who made the decision to put them in isolation, and a chance to appeal the decision to a non-partisan official." They also requested that the prison "[m]ake procedural safeguards." The allegations in the complaint sufficiently raise the appellants' claim that their procedural due process rights were violated.

III.

A.

Although both Stevenson and Manley had been convicted at the time of their complaint, they are classified as pretrial detainees for purposes of our constitutional inquiry. *See Cobb v. Aytch,* 643 F.2d 946, 962 (3d Cir.1981) ("The right to remain at liberty continues until a court pronounces a judgment of sentence, although after a jury has pronounced a guilty verdict the court may insist upon greater assurance that a defendant will submit to sentence."); *see also Fuentes v. Wagner,* 206 F.3d 335, 341 (3d

Cir.2000). Their initial sentences had been vacated and they were awaiting resentencing at the time of their complaint and for the duration during which they allege they were subjected to due process violations. Jones was awaiting trial at the time of the complaint. The Warden does not contest the status of the appellants as pretrial detainees for purposes of this appeal.

B.

With respect to the substantive due process claims of punishment, in *Bell v. Wolfish,* the Supreme Court established the principle that "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." 441 U.S. 520, 535-36, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). The *Bell* Court mandated a pragmatic approach to determining what constitutes punishment, and formulated the "reasonable relationship" test for determining whether a restriction is punitive. *Id.* at 539, 99 S.Ct. 1861 ("[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to punishment.'"). To aid courts in applying this test, the *Bell* opinion looked to the test in *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 168-69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963) for factors that courts might use as guideposts in distinguishing restrictions that are punitive from those that are not:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry. . . .

See also Bell, 441 U.S. at 537-38, 99 S.Ct. 1861. However, the Court cautioned that "[a]bsent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'" *Id.* at 538, 99 S.Ct. 1861 (quoting *Kennedy,* 372 U.S. at 168-69, 83 S.Ct. 554). Thus, "if a restriction or condition is not reasonably related to a legitimate goal – if it is arbitrary or purposeless – a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees." *Id.* at 539, 83 S.Ct. 554.[3]

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[3] In a footnote, the Court exhorted that

> In determining whether restrictions or conditions are reasonably related to the Government's interest in

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Unconstitutional punishment typically includes both objective and subjective components. As the Supreme Court explained in *Wilson v. Seiter,* 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991), the objective component requires an inquiry into whether "the deprivation [was] sufficiently serious" and the subjective component asks whether "the officials act[ed] with a sufficiently culpable state of mind[.]" *Id.* at 298, 111 S.Ct. 2321. The Supreme Court did not abandon this bipartite analysis in *Bell,* but rather allowed for an inference of mens rea where the restriction is arbitrary or purposeless, or where the restriction is excessive, even if it would accomplish a legitimate governmental objective. *See Bell,* 441 U.S. at 538-39 & n. 20, 99 S.Ct. 1861.Thus, we agree with the summary of the holding of *Bell* in *Rapier v. Harris*:

> [A] particular measure amounts to punishment when there is a showing of express intent to punish on the part of detention facility officials, when the restriction or condition is not rationally related to a legitimate

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maintaining security and order and operating the institution in a manageable fashion, courts must heed our warning that "[s]uch considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters."

Id. at 540 n. 23, 83 S.Ct. 554 (citations omitted).

> non-punitive government purpose, or when the restriction is excessive in light of that purpose.

172 F.3d 999, 1005 (7th Cir.1999).

Because the District Court could not make either an objective inquiry into the severity of the deprivations or a subjective inquiry into the mental state of the officials at the motion to dismiss stage, the dismissal was improper. One reasonable inference from the allegations in the complaint of disparate treatment of prisoners is that, at a minimum, the appellants' confinement in the SHU was arbitrary. *See id.* at 304, 111 S.Ct. 2321 (allowing collective examination of conditions of confinement); *see also Bell,* 441 U.S. at 542, 99 S.Ct. 1861 (stating that confining pretrial detainees "in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment"). Stevenson and Manley assert that they were not treated in the same manner as other similarly situated inmates. Jones' allegations suggest that one of the other prisoners who was alleged to have been involved in the riot at Gander Hill was released from the SHU in July 2003, and two others were moved into the general prison population in August 2003. These allegations intimate a degree of as yet unexplained arbitrariness in the procedures regarding placement in the SHU.

In evaluating a pretrial detainee's claim of unconstitutional punishment, courts must examine the totality of the circumstances within the institution. In *Hubbard v. Taylor*, 399 F.3d 150 (3d Cir.2005), we explained that "[o]ur inquiry into whether given conditions constitute 'punishment' must therefore consider the totality of circumstances within an institution." *Hubbard*, 399 F.3d at 160. Appellants assert that, as compared to the conditions for the general prison population, housing in the SHU is significantly more restrictive. The complaint draws specific, item-by-item comparisons between the restrictions in the SHU and those in the general prison population. The allegations in the complaint raise an inference of impermissible punishment that precludes granting a motion to dismiss and may warrant further discovery.[4]

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[4] The able District Judge erroneously relied upon *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) for the proposition that the institutional decision to place appellants in the SHU "is exactly the type of decision the Supreme Court noted when it held that federal courts should defer to prison officials with respect to managing the 'ordinary incidents of prison life.'" Appellants' pretrial detainee status necessitates a more nuanced approach. The focus in *Sandin* was on state-created liberty interests regarding "freedom from restraint which, while not exceeding *the sentence* in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484, 115 S.Ct. 2293 (emphasis added). The Court emphasized that its holding was driven by "the range of confinement to be normally expected for one serving an

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When warranted, such discovery need not be extensive. In situations such as this, where the allegations of punishment are coextensive with the allegations that form the basis for the procedural due process claim, it will generally be sufficient for the prison officials to submit affidavits to show that the classification was appropriate based on reasonable prison management concerns. While district courts have discretion to manage their cases, such affidavits alone will often be adequate to resolve the punishment inquiry. Although the substantive and procedural due process evaluations are distinct, a showing by the prison officials that a restrictive housing assignment is predicated on a legitimate managerial concern and is therefore not arbitrary or purposeless, will typically foreclose the substantive due process inquiry.

C.

Appellants assert that they were denied notice of their transfer and an opportunity to respond. The Supreme Court has repeatedly stated that "[t]he core of due process is the right to notice and a meaningful

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indeterminate term," *id.* at 487, 115 S.Ct. 2293, and the "expected perimeters of the sentence imposed by a court of law," *id.* at 485, 115 S.Ct. 2293. Several courts of appeals, including this one, subsequently concluded that "*Sandin* does not apply [to pretrial detainees]. *Sandin* concerned punishment of a sentenced prisoner, and therefore required a completely different analysis." *Fuentes*, 206 F.3d at 342 n. 9; *see also Benjamin*, 264 F.3d at 188.

opportunity to be heard." *LaChance v. Erickson,* 522 U.S. 262, 266, 118 S.Ct. 753, 139 L.Ed.2d 695 (1998). Appellants have sufficiently pled facts to show that they were housed in the restrictive conditions of the SHU without any procedural protections. Although pretrial detainees do not have a liberty interest in being confined in the general prison population, they do have a liberty interest in not being detained indefinitely in the SHU without explanation or review of their confinement. This result is compelled by our holding in *Shoats v. Horn,* 213 F.3d 140 (3d Cir.2000). In our discussion in *Shoats* focusing on the liberty interests at stake, we explained that "we have no difficulty concluding that eight years in administrative custody, with no prospect of immediate release in the near future, is 'atypical' in relation to the ordinary incidents of prison life." *Id.* at 144. Unlike appellants, Shoats was a sentenced inmate who received periodic review of his status, to which he was permitted to respond. *Id.* at 145-46. As explained above, the protections due to sentenced inmates provide a floor for what pretrial detainees may expect.

In determining what procedural protections are adequate, we are guided by the tenet that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands. Accordingly, resolution of the issue whether . . . administrative procedures provided . . . are constitutionally sufficient requires analysis of the governmental and private interests that are affected." *Mathews v. Eldridge,* 424

U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (citations omitted). Thus, the substantive liberty analysis is integral to the inquiry into the process due. *See, e.g., Wolff v. McDonnell,* 418 U.S. 539, 560, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) ("Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." (citations omitted)); *Benjamin v. Fraser,* 264 F.3d 175, 190 (2d Cir.2001).

Taking into account both the private interests of the detainees and the governmental function involved, it becomes clear that the process required for administrative transfers of pretrial detainees need not be extensive. Detainees have a liberty interest in not being subjected to punishment for the crime with which they have been charged until after they have been convicted and sentenced, but the governmental interest in maintaining prison security for the duration of their detention is substantial. *Bell v. Wolfish,* 441 U.S. 520, 540, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979) ("The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained.").

Prison officials must provide detainees who are transferred into more restrictive housing for administrative purposes only an explanation of the reason for their transfer as well as an opportunity to respond. This level of process comports with the Supreme

Court's holding in *Hewitt v. Helms,* 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983) that the removal of a sentenced inmate from the general prison population and his transfer into administrative segregation requires at least a minimal degree of process. The Court explained that "the Due Process Clause requires only an informal nonadversary review of evidence . . . in order to confine an inmate feared to be a threat to institutional security to administrative segregation." *Id.* at 474, 103 S.Ct. 864. This informal nonadversary review is satisfied when an inmate receives "some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation." *Id.* at 476, 103 S.Ct. 864. The Court further explained that "[t]he proceeding must occur within a reasonable time following an inmate's transfer. . . . " *Id.* at 476 n. 8, 103 S.Ct. 864.

The degree of process required varies depending on the reason for the transfer, with greater process accorded to prisoners who are confined for disciplinary infractions than those moved for purely administrative reasons. *See Mathews,* 424 U.S. at 334, 96 S.Ct. 893. In *Wolff v. McDonnell,* 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), the Supreme Court held that "written notice of the charges must be given to the disciplinary-action defendant in order to inform him of the charges and to enable him to marshal the facts and prepare a defense," and "there must be a 'written statement by the factfinders as to the evidence relied on and reasons' for the disciplinary

action." *Id.* at 564, 94 S.Ct. 2963. As the Second Circuit has noted, "the procedures required by *Wolff* apply if the restraint on liberty is imposed for disciplinary reasons; if the restraint is for 'administrative' purposes, the minimal procedures outlined in *Hewitt* are all that is required." *Benjamin,* 264 F.3d at 190; *see also Rapier v. Harris,* 172 F.3d 999, 1005-06 (7th Cir.1999). Due to the unique exigencies of prison management, and in accordance with *Hewitt,* the minimal exchange of paperwork our holding will occasion need not occur prior to the transfer of a detainee.

Jones' complaint suggests that his transfer was occasioned by his alleged participation in a prison riot, which may necessitate a higher level of procedure. Stevenson and Manley allege only that they were transferred without explanation. The Warden stated in an affidavit attached to his memorandum in support of the motion to dismiss that Jones' transfer to the SHU was due to the fact that he had "very serious pending charges" and "a number of inmate disciplinary infractions." The Warden also stated that Stevenson and Manley were housed in the SHU based on their "potential . . . to again receive a sentence of death." Accordingly, the District Court should examine the asserted purposes for appellants' detentions, and determine whether sufficient process has been afforded.

In considering the asserted rationale for placing pretrial detainees in restricted housing, courts should be mindful of our pronouncement in *Shoats*: "Shoats

could conceivably be held in administrative custody merely because his prior crimes reasonably foreshadow future misconduct." *Shoats,* 213 F.3d at 146. This consideration is consistent with the Supreme Court's emphasis on the principle that "we are unwilling to substitute our judgment on these difficult and sensitive matters of institutional administration and security for that of 'the persons who are actually charged with and trained in the running' of such facilities." *Block v. Rutherford,* 468 U.S. 576, 588, 104 S.Ct. 3227, 82 L.Ed.2d 438 (1984) (quoting *Bell,* 441 U.S. at 562, 99 S.Ct. 1861).

In *Bell,* the Supreme Court instructed that if there is a reasonable relationship between the particular condition or restriction of pretrial detention and a legitimate governmental objective, then that condition, "without more," does not infringe upon a detainee's constitutional rights. *Bell,* 441 U.S. at 539, 99 S.Ct. 1861. In this case, at the motion to dismiss stage, it is not possible to discern whether the relationship between the appellants' detention in the SHU and a legitimate governmental objective is reasonable. Such a determination may be properly made on a motion for summary judgment, at which point the Warden must come forward and demonstrate the governmental objective in question.

IV.

Warden Carroll asserts that he is entitled to qualified immunity on the grounds that even if the

facts alleged show a violation of a constitutional right, that right was not clearly established. *Saucier v. Katz,* 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001) ("The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."). The District Court dismissed the complaint on the merits and therefore did not reach the issue of qualified immunity. It is not necessary for us to resolve this question now. We leave it to the District Court to consider qualified immunity on remand.

V.

Under the liberal construction of complaints afforded to pro se prisoner plaintiffs, we find that the complaint challenges the reasonable relationship of the appellants' confinement to a legitimate government objective and alleges impermissible punishment of pretrial detainees. The complaint alleges deprivations suffered by the appellants and compares their living conditions to those of the general prison population. The appellants asserted that they had sought, but been refused, an explanation for their placement in the SHU. Accordingly, the complaint alleges sufficient facts to survive the motion to dismiss. We will vacate the dismissal of the complaint and remand the case to the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID STEVENSON, MICHAEL MANLEY, and MICHAEL L. JONES,	)	
Plaintiffs,	)	Civil Action No. 04-139-KAJ
v.	)	
THOMAS CARROLL,	)	
Defendant.	)	

MEMORANDUM ORDER

(Filed Dec. 7, 2004)

I. INTRODUCTION

Presently before me is a Motion to Dismiss (Docket Item ["D.I."] 24) and a Motion for a Protective Order (D.I. 26) filed by Thomas Carroll ("Defendant"). Also before me is an Amended Motion for Order to Show Cause and a Temporary Restraining Order (D.I. 14) and a Motion to Compel Discovery (D.I. 31) filed by David Stevenson, Michael Manley, and Michael L. Jones (collectively "Plaintiffs"). Plaintiffs, who are inmates at the Delaware Correctional Center (the "DCC"), brought this action under 42 U.S.C. § 1983 alleging violations of their rights under the Eighth and Fourteenth Amendments to the United States Constitution. (D.I. 1-4.) Jurisdiction is proper under 28 U.S.C. § 1331. For the reasons that follow, Defendant's Motions to Dismiss will be granted and the remaining Motions will be dismissed as moot.

II. BACKGROUND

The Plaintiffs had been sentenced to death by the Superior Court of Delaware. (D.I. 4, Ex. 1 at 3.) On or about May 30, 2001, however, the sentences were vacated and the case was remanded to the Superior Court for review of the sentences. Plaintiffs were then moved from the death-row tier of the DCC to a more secure section for pre-trial detainees.[1] (*Id.*) At the time of the filing of the Complaint, Plaintiffs had been housed in the more restrictive section for 32 months. (*Id.* at 4.) Plaintiffs assert that they have never been given an explanation as to why they have been placed in their more restrictive housing within the prison. (*Id.*) Plaintiffs wrote to Defendant, the Warden of the prison, to complain about their assignment to the restrictive section of pre-trial housing but they did not receive a reply. (*Id.* at 2.)

---

[1] There appears to be a disagreement between Defendant and Plaintiffs over whether the area in which Plaintiffs were housed is considered isolation. (*See* D.I. 25, Ex. A at 1.) Additionally, Plaintiffs list a number of rules and restrictions that are enforced in their housing area to highlight the differences between their housing section and the normal pre-trial housing section. (D.I. 4, Ex. 1 at 3.) As Plaintiffs do not allege that the prison conditions alone are a violation of their constitutional rights, but rather allege that the decision to house them there is a such a violation, an exact understanding of their present housing situation is not required.

III. STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the factual allegations in the complaint must be accepted as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (*per curiam*). This is especially true where, as here, the complaint is filed *pro se*. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citations omitted). A *pro se* complaint can only be dismissed for failure to state a claim if it appears "beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). However, broad, unsupported allegations do not preclude dismissal and do not constitute a cause of action. *Signore v. City of McKeesport*, 680 F. Supp. 200, 203 (W.D. Pa. 1988), *aff'd*, 877 F.2d 54 (3d Cir. 1989).

IV. DISCUSSION

Plaintiffs argue that their assignment to the more restrictive section of pre-trial housing, without explanation, is a violation of their constitutional rights under 42 U.S.C. § 1983. (D.I. 4.) The Supreme Court has held, however, that "[i]t is plain that the transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence." *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). The Court has further stated "that federal courts ought to afford appropriate

deference and flexibility to state officials trying to manage a volatile environment. . . . Such flexibility is especially warranted in the fine-tuning of the ordinary incidents of prison life, a common subject of prisoner claims." *Sandin v. Conner*, 515 U.S. 472, 482-483 (1995). More specifically, this court has held that the transfer of an inmate from general population to "administrative segregation without being given notice and an opportunity to argue against the transfer" is not a violation of the inmates constitutional rights. *Brown v. Cunningham*, 730 F. Supp. 612, 614 (D. Del. 1990).

Looking at the case law, it is evident that Plaintiffs have failed to state a claim upon which relief can be granted. The prison's decision to place Plaintiffs in a more secure housing section is exactly the type of decision the Supreme Court noted when it held that federal courts should defer to prison officials with respect to managing the "ordinary incidents of prison life. *Sandin*, 515 U.S. at 482-483. Therefore, even assuming all the facts pleaded in the Plaintiffs' Complaint are true, they have failed to state a claim upon which relief can be granted. Consequently, Defendant's Motion to Dismiss will be granted and all other motions will be dismissed as moot.

V. CONCLUSION

Accordingly, it is hereby ORDERED that Defendants' Motion to Dismiss (D.I. 24) is GRANTED, and Defendant's Motion for a Protective Order (D.I. 26),

Plaintiffs' Amended Motion for Order to Show Cause and Temporary Restraining Order (D.I. 14) and Motion to Compel Discovery (D.I. 31) are all dismissed as moot.

/s/ Kent A. Jordan
UNITED STATES DISTRICT JUDGE

December 7, 2004
Wilmington, Delaware

ORIGINAL

FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

David Stevenson, Michael Manley, Michael L. Jones
(Enter above the full name of the plaintiff in this action)

V.

Thomas Carroll, Warden of Delaware Correctional Center

(Enter above the full name of the defendant(s) in this action)

I. Previous lawsuits

A. Have you begun other lawsuits in state or federal courts dealing with the same facts involved in this action or otherwise relating to your imprisonment?
YES [X] NO [ ]

B. If your answer to A is yes, describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit

Plaintiffs (see attached.)

Defendants (see attached.)

2. Court (if federal court, name the district; if state court, name the county) (see attached)

3. Docket number (see attached)

4. Name of judge to whom case was assigned (see attached)

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)
(see attached)

6. Approximate date of filing lawsuit
(see attached)

7. Approximate date of disposition
(see attached)

II. A. Is there a prisoner grievance procedure in this institution? YES [X] NO [ ]

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure? YES [X] NO [ ]

C. If your answer is YES,

1. What steps did you take?
(see attached)

2. What was the result? (see attached)

D. If your answer is NO, explain why not
N/A

E. If there is no prison grievance procedure in the institution, did you complain to prison authorities? YES [X] NO [ ]

F. If your answer is YES,

1. What steps did you take? (see attached)

2. What was the result? (see attached)

III. Parties

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff David Stevenson #317036, Michael Manley #338485, Michael L. Jones #417267

Address Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977

(In item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item C for the names, positions, and place of employment of any additional defendants.)

B. Defendant Thomas Carroll is employed as warden at Delaware Correctional Center 1181 Paddock Road, Smyrna, DE 19977

C. Additional Defendants_____

_____

_____

_____

IV. Statement of Claim

(State here as briefly as possible the *facts* of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach extra sheet if necessary.)

(see attached)_____

_____

_____

_____

_____

V. Relief

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

(see attached)_____

_____

_____

_____

_____

Signed this ___ day of _____, 20__

_____

(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

_____ _____

Date (Signature of Plaintiff)

I. Previous Lawsuits

B. 1. *Parties to this previous lawsuit*

Plaintiff: David Stevenson #317036

Defendant: Thomas Carroll, warden of Delaware Correctional Center (DCC), Joe Hudson, Support Services Manager at D.C.C.

2. *Court*: United States District Court, District of Delaware.

3. *Docket number*: CA 00-732 KAJ

4. *Name of judge to whom case was assigned*: Judge Kent A. Jordan

5. *Disposition*: still pending

6. *Approximate date of filing lawsuit*: August 9, 2000

7. *Approximate date of disposition*: still pending

II. C.

1. *What steps did you take*? I filed a grievance July 6, 2003 to get an explanation as to why I'm in isolation. I only filed a grievance to see if I was going to get

some kind of response from the administration.

2. *What was the result*? I was told, "Inmates do not have the choice of where they are housed" and "submit a request to see your counselor and discuss it with him/her."

F.

1. *What steps did you take*? The grievance procedure at D.C.C. does not handle housing issues. I wrote letters to: Warden Thomas Carroll, Deputy Warden Lawrence McGuigan, Captain Joseph Belanger and Captain Clyde Sagers, and Counselor Marissa McFadden. I asked each person, why was I in isolation, when am I getting out?

2. *What was the result*? I never received a response from Warden Thomas Carroll or Deputy Warden Lawrence McGuigan. I received verbal responses from Captains Joseph Belanger and Clyde Sagers. Both said they did not know why I'm here in isolation and when I would be allowed out. I received a written response from Counselor Marissa McFadden that said she didn't have any classification papers on me and that I'm in isolation because I'm unsentenced. I received a verbal response from her that she does not know why I'm being kept in isolation.

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

Plaintiff – Michael L. Jones

Defendant Thomas Carroll

I. Previous lawsuits

1. Parties to this previous lawsuit
Plaintiffs – Michael L. Jones
Defendants – Thomas Carroll

2. Court United States District Court

3. Docket number 03-1139-GMS

4. Name of Judge to whom case was assigned – Judge Gregory M. Sleet

5. Disposition – still pending

6. Approximate date of filing lawsuit – December 2, 2003

7. Approximate date of disposition – still pending

II.

1. What steps did you take? N/A

2. What was the result? N/A

D. if your answer is NO, explain why not – A disiplinary action is not grievable.

1. What steps did you take? I wrote the Warden Thomas Carroll, deputy Warden Lawrence McGuigan, Captain Belinger, Captain Sagers, and SHU Counsler Marissa McFadden.

2. What was the result? There were none, SHU counsler Marissa McFadden said she has no idea why.

III.

A. Name of Plaintiff – Michael L. Jones

Address – Delaware Correctional Center 1181 Paddock Rd. Smyrna Del 19977

B. Defendant – Thomas Carroll is employed as The Warden at Delaware Correctional Center Smyrna Delaware

IV. Statement of Claim

The plaintiff Michael L. Jones was moved from ganger hill prision in Wilmington Delaware on feb. 19, 2003 along with several other inmates for an alledge riot to Smyrna DCC SHU. Plaintiff never recieved a hearing nor was he able to defendant himself against the said accusations. In July of 2003 one of the alledge partakers (Robert Garvey) was moved back to gander hill prison regular population, in August the rest of the alledge partakers (Russell Grimes and Jose Pena) were moved to B-Building pre-trial at DCC except for plaintiff. Plaintiff remains in the SHU at DCC which is for inmates which have disciplinary problems or protected custody. Since feb. 20, 2003 plaintiff has wrote the Warden Thomas Carroll, deputy Warden Lawrence McGuigan, Captain Belinger, Captain Sagers and SHU Counsler Marissa McFadden trying to get an explanation as to why he is in the SHU. None of plaintiffs letters were responded to. Plaintiff has never had a hearing with staff as to why he had

to remain in the SHU. The Warden Thomas Carroll is to be held accountable for all actions.

Signed this 25 day of febuary 2004

/s/ Michael L. Jones

I declare under penalty of perjury that the foregoing is true and correct.

February 25, 2004 /s/ Brian D. Engrem
Notary
2-25-04

IV. *Statement of Claim*

1. Plaintiffs David Stevenson and Michael Manley are incarcerated at Delaware Correctional Center.

2. Defendant Thomas Carroll is employed by the State of Delaware at Delaware Correctional Center.

3. Defendant Thomas Carroll is the Warden in charge of all operations at Delaware Correctional Center. He is sued in his individual and official capacities.

4. Defendant has acted and continues to act under color of State Law at all times relevant to this complaint.

5. The Plaintiffs were sentenced to Death by the Superior Court of Delaware on or about January 10, 1997.

6. Through the appeals process in State courts, the Plaintiffs sentence was vacated and convictions remanded for review by a new Superior Court Judge on or about May 30, 2001.

7. As was standard practice at Delaware Correctional Center the Plaintiffs were returned to pre-trial detainee status and moved off of the Death Row tier.

8. Instead of being moved to pre-trial, as other inmates were in the same situation, plaintiffs were moved to an isolation tier for pre-trial inmates.

9. The pre-trial isolation tier was established for inmates who had discipline problems in normal pre-trial, protective custody, and for observation of new inmates and transfers.

10. Plaintiffs weren't given an explanation for the punitive move.

11. Plaintiffs wrote Defendant Thomas Carroll and his subordinates and weren't given any explanations.

12. The Rules in isolation are as follows:

    a) Recreation for about an hour three days out of a week. Which means out of cell three hours a week. (45 minutes recreation and 15 minutes shower.)

    b) Inmates are handcuffed to and from the steel cage recreation area and to and from the shower.

c) One 45-minute visit a week. Inmates are handcuffed and shackled at visits. Non-contact in a protective booth.

d) One 10-minute phone call a week.

e) Law Library is via mail and there is at least a twenty four hour wait on all information.

f) Legal calls are at least a twenty four hour wait.

g) No religious services.

h) There isn't a light switch in cells. Officers control the lights. Furthermore, there isn't any individual cell light switches. Either all the cell lights are on or off.

i) Pre-trial isolation and the sanction tier are the only housing areas where televisions are banned.

j) Commissary is every two weeks. Inmates can spend fifteen dollars each time. Included in the fifteen dollars are stamps, paper, envelopes, hygiene products, and food. No allowances are made even though the institution stopped mailing three free letters a week for inmates. All items aren't available to isolation inmates.

k) There aren't any exercise opportunities in the recreation yard inside or outside.

l) Inmates can't possess any art supplies, playing cards, etc., or any mind stimulation activities.

13. The Rules for every Pre-trial inmate not in isolation:

a) Recreation every day. Inmates are only locked in cells for institutional counts and night lock-in.

b) Inmates are only handcuffed when going to court.

c) Two-45 minute, or one-90 minute visit a week. contact.

d) Two-10 minute phone calls a week.

e) Law Library is available everyday. Inmates do research on their own at the Library.

f) Legal Calls available upon request.

g) Religious services via television.

h) Light switches in cells.

i) Commissary is every week. Inmates can spend forty dollars a week. All items are available.

j) Recreation equipment is available.

k) Inmates can have art supplies, playing cards and board games to stimulate the mind.

14. Since the Plaintiffs have been in isolation (approximately 32 months to date) they have not had a hearing about their stay in isolation, have not received any reason via paperwork as to why they're in isolation, have not had an opportunity to confront the decision maker, orally or in writing.

15. There also aren't any rules, in writing, from the institution informing inmates how to leave isolation.

16. Plaintiff David Stevenson was moved to normal pre-trial for a month from December 2003 to January 2004. He was moved mysteriously there and moved mysteriously back, still without an explanation.

17. At the time of this complaint Plaintiffs David Stevenson and Michael Manley are still in isolation and still haven't received a reason or cause from Defendant Thomas Carroll.

V. *Relief*

1. Plaintiffs want to be moved out of isolation and to normal pre-trial until the conclusion of their criminal cases and they are either sentenced or released.

2. Plaintiffs want to be awarded monetary damages of at least $100,000 a month, for each Plaintiff, for every month the Court deems the Plaintiffs were illegally kept in isolation, for mental abuse and intentional distress, and for deliberate indifference by Defendant Thomas Carroll.

3. Establish a system to inform inmates why they were put into isolation, who made the decision to put them in isolation, and a chance to appeal the decision to a non-partisan official.

4. Establish rules for how long any pre-trial inmate can be put into isolation.

5. Establish a system that inmates kept in isolation because of lack of space in normal pre-trial get all the rights of normal pre-trial until they can be moved.

6. Make procedural safeguards.

7. Any other relief the Court deems necessary.

B. Issue and Injunction ordering Defendant Thomas Carroll:

    1. To immediately give Plaintiffs normal pre-trial privileges as set forth in this complaint including personal televisions, complete commissary item access, and recreation time.

    2. Move Plaintiffs to normal pre-trial when space is available.

    3. To refrain from retaliatory practices by his staff.

    4. To immediately start process of moving all pre-trial inmates out of isolation who have been housed there more than 30 days.

5. Immediately establish a 30 day cut off for pre-trial inmates yearly stay at any one time in isolation.

Signed this 25 day of February, 2004

/s/ David Stevenson
/s/ Michael R. Manley
/s/ Michael L. Jones

I declare under penalty of perjury that the foregoing is true and correct.

2-25-04
(Date)

/s/ David Stevenson
/s/ Michael Manley
/s/ Michael L. Jones

/s/ Brian D. Engrem
Notary
2-25-04

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID STEVENSON, MICHAEL MANLEY, and MICHAEL JONES	)	
Plaintiffs,	)	C.A. No.04-139-KAJ
v.	)	Jury Trial Demanded
THOMAS CARROLL	)	
Defendant.	)	

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION TO DISMISS

(Filed Jul. 9, 2004)

1. David Stevenson, Michael Manley and Michael Jones ("plaintiffs") are detainees incarcerated and under the supervision of the Delaware Department of Correction ("DOC") within the Delaware Correctional Center ("DCC") Smyrna, Delaware.

2. On or about March 4, 2004, the plaintiffs filed a complaint with leave to proceed *in forma pauperis* pursuant to 42 U.S.C. §1983, alleging Eighth and Fourteenth Amendment Due Process violations. (D.I.##1-4). Specifically, the plaintiffs allege that subsequent to their death sentences being overturned in May, 2001, the plaintiffs were transferred from death row to "an isolation tier for pretrial inmates" in DCC's SHU's pre-trial unit. (Complaint, *passim*). The plaintiffs claim that they should

have been moved to the less restrictive B building pre-trial unit rather than SHU's pre-trial isolation which houses inmates who have "disciplinary problems." *Id.* For relief, the plaintiffs request monetary damages as well as injunctive relief. *Id.*

3. In deciding a motion to dismiss under Fed. R.Civ. P. 12 (b)(6), the Court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. *See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir.1998). A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiffs favor, no relief could be granted under any set of facts consistent with the allegations of the complaint. *Id.* Claims may be dismissed pursuant to Rule 12(b)(6) motion only if the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Where the plaintiffs are *pro se* litigants, the court has an obligation to construe the complaint liberally. *Haines v. Kerner,* 404 U.S. 519, 520 (1972). Additionally, a claim under 42 U.S.C. §1983 "must allege conduct which deprives the victim of a right or privilege secured by the Constitution or laws of the United States." *Freedman v. City of Allentown,* 853 F.2d 1111, 1114 (3d Cir.1988) (citations omitted).

4. Plaintiffs allege their Fourteenth Amendment due process rights were violated when they

were moved "without any explanation" to SHU's pre-trial unit after their death sentences were overturned. (Complaint, passim). Analysis of plaintiffs' due process claims begins with determining whether a constitutionally protected liberty interest exists. *Sandin v. Connor,* 515 U.S.472 (1995); *Hewitt v. Helms,* 459 U.S.460 (1983). "Liberty interests protected by the Fourteenth Amendment may arise from two sources – the Due Process Clause itself and the laws of the States. *Hewitt,* 459 U.S. at 466. The Supreme Court has explained that liberty interests protected by the Due Process Clause are limited to "freedom from restraint" which imposes an atypical and significant hardship in relation to the ordinary incidents of prison life." *Sandin,* 515 U.S. at 483-84. Reclassification to a stricter housing unit and its consequent loss of privileges "falls within the expected parameters of the sentence imposed by a court of law." Id. at 485. Moreover, the Delaware District Court has determined that the Department of Correction statutes and regulations do not provide prisoners with liberty or property interests protected by the Due Process Clause. *Carrigan v. State of Delaware,* 957 F.Supp.1376 (D.Del.1997). (Inmates may be administratively transferred pending classification or reclassified to more restrictive security levels for violations of the Rules of Conduct. DOC Rules of Conduct, Number 4.2) DOC Procedure 3.31 explicitly states that the warden has virtually unlimited discretion in placing inmates within the prison in "any security/custody level." *See, i.e, Brown v. Cunningham,* 730 F.Supp.612, 614 (D.Del.1990) (stating that

plaintiffs transfer from general population to administrative segregation, without being given notice and opportunity to challenge it, was not violation of plaintiffs liberty interest). Neither Delaware law nor DCC regulations create a liberty interest in a prisoner's classification within an institution. 11 *Del.C.* §6529(e). Defendants assert plaintiffs' transfer from the death row tier to SHU's pre-trial unit was within the normal limits or range of custody [their] convictions authorizes the State to impose. *Meachum v. Fano,* 427 U.S. 215, 225 (1976).

Contrary to plaintiffs' allegations, they are not housed in isolation. (See affidavit of Thomas Carroll attached hereto Exh.A-1). Admittedly, SHU pre-trial is more restrictive than B building pre-trial; however, the plaintiffs are not in isolation; nor are they denied access to their attorneys, the law library, commissary, recreation or the grievance procedure. (A-2). The plaintiffs are housed in SHU pre-trial based on the security needs of the institution and the determination that the plaintiffs present a significant security risk if housed in the B building pre-trial unit. (A-1). Once re-sentenced, the plaintiffs will be classified to a security level pursuant to DOC guidelines and procedures. (A-2). Accordingly, since plaintiffs' transfer to another unit within the DCC does not "impose an atypical and significant hardship in relation to the ordinary incidents of prison life," their complaint should be dismissed pursuant to Fed.R.Civ.P.12(b)(6) for failure to state a claim upon which relief may be granted.

5. Plaintiffs also allege that defendant Carroll has demonstrated deliberate indifference regarding their conditions of confinement in violation of their Eighth Amendment right to be free from cruel and unusual punishment. (Complaint, *passim*). The Supreme Court has held that conditions of confinement amount to cruel and unusual punishment only where they "involve the wanton and unnecessary infliction of pain" or are "grossly disproportionate to the severity of the crime warranting imprisonment" or deprive inmates of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

> [Conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.

Id at 347. While inmates retain some constitutional rights while incarcerated, by virtue of their conduct and resultant sentence, they must live in a restrictive environment. *Wilson v. Seiter,* 501 U.S. 294, 304 (1991). Under *Wilson,* in order to establish an Eighth Amendment constitutional violation based on the conditions of their confinement, plaintiffs must prove both an objective element – that the deprivation was sufficiently serious, and a subjective element that a prison official acted with a sufficiently culpable state of mind." *Id* at 297. The minimal requisite state of

mind for an Eighth Amendment violation is deliberate indifference. *Id.* The Court further stated that a constitutional violation will be found only when the conditions of confinement "have a mutually enforcing effect that produces the deprivation of a single identifiable human need such as food, warmth, or exercise," and that "[n]othing so amorphous as 'overall conditions' can rise to the level of [such a violation] when no specific deprivation of a single human need exists. *Id.* at 303-04.

6. Defendant addresses plaintiffs' various allegations below and conclude that plaintiffs fail to identify a constitutionally protected right enforceable under 42 U.S.C. § 1983. In brief, the plaintiffs list general complaints regarding the MSU's pre-trial unit's overall conditions, but fail to identify a time or date when they were deprived of a "single identifiable human need." *Wilson,* 501 U.S. at 304. Moreover, plaintiffs fail to allege defendant's personal involvement in any identified conduct. The plaintiffs claim that conditions in SHU's pre-trial unit only allow them one hour of recreation three days a week, one forty-five minute visitor meeting a week, one ten minute phone call a week, a 24 hour wait for law library information, commissary every other week and no vegetarian meals. (Complaint, *passim*). Plaintiffs further contend that other inmates who are moved from death row to pre-trial are moved to B building pre-trial, a less restrictive unit. While this statement may be true, it is also true that DCC personnel considered the plaintiffs security risks

which resulted in their being housed in SHU pre-trial. Admittedly, plaintiffs' movements and activities are more restricted in SHU's pre-trial unit; however, plaintiffs still enjoy many of the privileges and activities that are permitted in other areas of the facility. "Nothing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." *Wilson,* 501 U.S. at 305; *see also, Hoover v. Watson,* 886 F.Supp 410, 416-417 (D.Del. 1995), *aff'd* 74 F.3d 1226 (3d Cir. 1995). Plaintiffs have failed to demonstrate the constitutional deprivation they suffered or how defendant Carroll acted with a sufficiently culpable state of mind. Plaintiffs' allegations do not demonstrate wanton and unnecessary infliction of pain nor deliberate indifference on the part of defendant as to the state of their confinement. Despite less than perfect conditions at SHU's pre-trial unit plaintiffs have not been deprived of an identifiable human need. Plaintiffs' unsubstantiated allegations amount to nothing more than bald complaints concerning the overall conditions in MSU pre-trial. The presence of such burdens fails to establish a claim deemed justiciable by this Court making dismissal appropriate pursuant to Fed. R. Civ. P. 12(b)(6).

7. Assuming that the plaintiff may be attempting to hold the defendant liable based upon his supervisory position, it is well established that liability under 42 U.S.C.§1983 may not be predicated upon a theory of *respondeat superior. Rizzo v. Goode,* 423 U.S. 362 (1976); *Gay v. Petsock,* 917 F.2d 768 (3d Cir.

1990); *Heine v. Receiving Area Personnel,* 711 F.Supp. 178 (D.Del. 1989). To hold defendant liable, plaintiffs must: 1) identify with particularity what the defendant failed to do that demonstrates deliberate indifference: and 2) demonstrate a close causal relationship between the identified deficiency and plaintiffs' ultimate injury. *Sample v. Diecks,* 885 F. 2d 1099, 1118 (3d Cir. 1989); *City of Canton v. Harris,* 489 U.S. 378 (1989). Plaintiffs in this action have failed to show that the defendant exhibited deliberate indifference, or any other such acts which were related to any alleged injury which the plaintiffs claim they suffered. Accordingly, it is not surprising that plaintiffs fail to demonstrate any affirmative role on the part of the defendant that is in any way related to a Constitutional deprivation.

8. Moreover, plaintiff cannot maintain an action against the State defendant in his individual capacity. The plaintiff's complaint should be dismissed under the doctrine of qualified immunity. Government officials performing discretionary functions are immune from liability for damages, provided that their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). A right is "clearly established" when "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton,* 483 U.S. 635, 640 (1987).

9. Additionally, a violation of the Eighth Amendment cannot be predicated on mere negligence; it requires a finding of a culpable mental state on the part of prison officials. *Moore v. Tartler*, 986 F.2d 682 (3d Cir. 1993); *Haygood v. Younger*, 769 F. 2d 1350 (9th Cir. 1985). Therefore, to the extent plaintiffs allege that the defendant acted negligently (thereby violating their constitutional rights), such a claim is not cognizable under 1983. *See Chinchello v. Fenton*, 805 F.2d 126, 133 (3d Cir. 1986) (holding that to be legally responsible, the officials' misconduct cannot be merely a failure to act); *Commonwealth of Pennsylvania v. Porter* 659 F.2d 306, 336 (3d Cir. 1981), *cert. denied* 458 U.S. 1121 (1982). In this particular case, at worse, the defendant's actions can only be described as negligent. Mere negligence, however, does not satisfy the "deliberate indifference" standard *Wilson*, 501 U.S. at 298.

To the extent plaintiff seeks damages from the defendant in his official capacity the doctrine of sovereign immunity bars the claim. *See, Pagano v. Hadley*, 525 F. Supp. 92 (D.Del. 1982). Sovereign immunity provides that the State and its agencies may not be sued without its consent. *Doe v. Cates*, Del. Supr., 499 A.2d 1175 (1985), Del.Const.Art.I Sec.9. The only way to waive the State's sovereign immunity is by an act of the General Assembly. *Id.* at 1176. While it is true that the General Assembly has waived the defense of sovereign immunity as to any risk of loss covered by the State Insurance Coverage Program, 18 Del.C. §6511, there is no insurance in

any form applicable to the facts alleged in the present complaint. Consequently, sovereign immunity has not been waived in the present action, and plaintiff's suit against the defendant in his official capacity is barred.

11. Under 42 U.S.C §1983, an individual cannot be held liable in the absence of personal involvement or knowing acquiescence in the alleged deprivation. *Bracey v. Grenoble*, 494 F.2d 566 (3d Cir. 1974); *Commonwealth of Pennsylvania v. Porter*, 659 F.2d 306 (3d Cir. 1981), *cert. denied* 458 U.S. 1121 (1982). The plaintiffs fail to identify how the defendant participated in or was cognizant of the events which he claims deprived him of his constitutional rights. The plaintiffs' complaint is completely devoid of any allegations against the defendant or, for that matter, against any employee of the Department of Correction.

12. The defendant cannot be sued in his official capacity under 42 U.S.C. §1983. The Eleventh Amendment provides that "the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State." While the Amendment does not facially bar suits against the State by its citizens, the United States Supreme Court has held that in the absence of consent, a state is "immune from suits brought in federal courts by her own citizens as well as by

citizens of another State." *Edelman v. Jordan,* 415 U.S. 651, 662-63 (1974).

The Eleventh Amendment stands "for the constitutional principle that State sovereign immunity limit[s] the federal courts' jurisdiction under Article III." *Seminole Tribe of Florida v. Florida,* 517 U.S 44 (1996). The United States Congress can waive the state's sovereign immunity, and therefore, its Eleventh Amendment immunity through the Fourteenth Amendment; however, only a clear indication of Congress' intent to waive the states' immunity will produce this result. *Id.* No such clear intent can be seen in 42 U.S.C. §1983. In fact, Congress' intent appears to be to the contrary as the statute facially allows suits only to be brought against "persons." 42 U.S.C. §1983.

A suit against a state official in his official capacity is treated as a suit against the State. *Hafer v. Melo,* 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). Under federal law, the defendant in his official capacity is not a "person" for the purposes of 42 U.S.C. § 1983. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 71 (1989). Consequently, given this categorization, this Court lacks jurisdiction over the defendant in his official capacity, and defendant is outside the class of persons subject to liability under 42 U.S.C. §1983. Therefore, dismissal is appropriate.

13. To the extent plaintiffs may be deemed to be asserting a pendent State claim, the State Tort Claims Act shields defendant from personal liability

for acts done in good faith, without gross or wanton negligence, and arising out of and in connection with, the performance of official discretionary duties. 10 *Del C.* §4001(3); see, *Smith v New Castle County Vo-Tech,* 574 F. Supp. 813, 820 (D.Del. 1983). The defendant is entitled to good faith immunity under 10 *Del C.* §4001. In order for the defendant to be held liable, plaintiffs must establish that his acts either were not in connection with the performance of any official duty . . . not done in good faith . . . or constituted gross or wanton negligence. Plaintiffs have been unable to meet these criteria and therefore, dismissal is now appropriate.

14. As amended 28 U.S.C. § 1915(e)(2)(B)(ii) mandates dismissal of *in forma pauperis* actions determined to be frivolous by the Court. All of the legal claims raised by plaintiffs are *stare decisis* by the well-developed manifest case law decisions of this Court, the Third Circuit Court of Appeals, the United States Supreme Court, and the courts of the State of Delaware. There being no arguable legal basis for plaintiffs' claims, 28 U.S.C. § 1915(e)(2)(B)(ii) mandates dismissal of plaintiffs' complaint.

WHEREFORE, for all the foregoing reasons, the defendant respectfully requests this Honorable Court enter an Order granting the defendant's Motion to Dismiss.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Richard Hubbard
Richard W. Hubbard, ID#2442
Department of Justice
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, De 19801
(302) 577-8400

Dated: July 9th, 2004

Attorney for Defendant
Thomas Carroll

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DAVID STEVENSON, MICHAEL MANLEY, and MICHAEL L. JONES,	)	
Plaintiffs,	)	C.A. No. 04-139-KAJ
v.	)	Jury Trial Demanded
THOMAS CARROLL,	)	
Defendant.	)	

AFFIDAVIT OF THOMAS CARROLL

1. I am employed by the State of Delaware Department of Correction ("DOC") as the Warden at

the Delaware Correctional Center ("DCC"). I have been employed by the DOC since April 1,1980, and in my present capacity since October 1, 2001. My duties include responsibility for the management and operation of the DCC.

2. I have read the Plaintiffs' Complaint and dispute the allegations therein.

3. Plaintiffs' Stevenson and Manley were sentenced to death in January, 1997; however, their sentences for conviction of Murder 1st Degree were subsequently overturned in May, 2001. Presently, the plaintiffs are awaiting a new penalty hearing. Plaintiff Jones also has pending charges including Attempted Murder and Murder 1st Degree. Specifically, the plaintiffs are housed in SHU Building #18, D tier, they are not housed in isolation as they allege in their Complaint. An individual is considered for housing in the SHU pre-trial housing area based on the security needs of the institution and the determination that the individual presents a significant security risk if housed in the B Building pre-trial unit. The plaintiffs are viewed as security risks if housed in B Building pre-trial unit. Based on the potential for plaintiffs' Stevenson and Manley to again receive a sentence of death, it was determined that they presented a significant risk if housed in the B Building pre-trial unit. Based on this determination, plaintiffs' Stevenson and Manley were assigned to the SHU pre-trial housing area. In addition to very serious pending charges, plaintiff Jones has had a number of inmate disciplinary rule infractions that resulted in the

determination that he was inappropriate for placement in the B Building pre-trial unit. Based on this determination and the prevailing security needs of the institution, plaintiff Jones was placed on the SHU pre-trial housing area.

4. Although SHU's pre-trial is more restrictive than B Building pre-trial, inmates are not denied access to their attorneys, the law library, commissary, recreation or the grievance procedure as alleged by the plaintiffs. One sentenced, the plaintiffs will be classified to a security level pursuant to Department of Correction guidelines and procedures.

/s/ Thomas Carroll
Thomas Carroll

SWORN AND SUBSCRIBED before me this 1st day of July, 2004.

/s/ Michael Little
Notary

CERTIFICATE OF MAILING AND/OR DELIVERY

The undersigned certifies that on July 9th, 2004, he caused the attached *Defendant's Memorandum of Points and Authorities in Support of His Motion to Dismiss* to be delivered to the following persons in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT(S):

David Stevenson, Inmate
SBI #00317036
Michael Manley, Inmate
SBI #00338485
Michael L. Jones, Inmate
SBI #00417267
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MANNER OF DELIVERY:

_ One true copy by facsimile transmission to each recipient

✓ Two true copies by first class mail, postage prepaid, to each recipient

_ Two true copies by Federal Express

_ Two true copies by hand delivery to each recipient

/s/ Richard Hubbard
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